

Appl. No. 10/011,011  
Docket No. 14XZ00088/GEM-0202

## REMARKS / ARGUMENTS

### Status of Claims

Claims 2-57 and 59-63 are pending in the application. Claims 2-57 and 59-63 stand rejected. Applicant has amended Claims 57, 59, and 60, and has cancelled Claims 56 and 61-63, leaving Claims 2-55, 57, and 59-60 for consideration upon entry of the present Amendment.

Applicant respectfully submits that the rejections under 35 U.S.C. §101, 35 U.S.C. §112, second paragraph, and 35 U.S.C. §102(b) have been traversed, that no new matter has been entered, and that the application is in condition for allowance.

These amendments and accompanying remarks were not presented earlier because Applicant did not fully appreciate the nature of the Examiner's position until the Applicant was advised in more detail of the position by the final rejection. The claim amendments presented herein, which Applicant respectfully requests entry thereof, should require only a cursory review by the Examiner as they include only elements presented in earlier examined claims.

### Claim Objections

Claims 60-63 are objected to under 37 CFR 1.75(c) as being of improper form for failing to further limit the subject matter of a previous claim.

Applicant has amended Claim 60 and cancelled Claims 61-63 to overcome these objections.

Accordingly, Applicant respectfully requests the Examiner to reconsider and withdraw these objections, which Applicant considers to be overcome.

### Rejections Under 35 U.S.C. §101

Claims 60-63 stand rejected under 35 U.S.C. §101, for being directed to non-statutory subject matter. The Examiner comments that the article of manufacture,

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program storage device, and computer program product claims are dependent upon a method, represent a mixing of statutory classes, and as such the claims are non-statutory.

Applicant has amended Claim 60 and cancelled Claims 61-63 to overcome these rejections.

Accordingly, Applicant respectfully requests the Examiner to reconsider and withdraw these rejections, which Applicant considers to be overcome.

**Rejections Under 35 U.S.C. §112, Second Paragraph**

Claims 2-56 and 59-63 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention.

The Examiner comments that "Claim 59 recites determining a model or parametric characteristics. However, the dependent claims elaborate only on the model disclosed. This would render the claims vague and indefinite." [paper 20060928, p.3]

Applicant respectfully disagrees that the claimed invention is vague and indefinite, and submits that one skilled in the art would appreciate that the claimed model, as disclosed in the application as originally filed, takes into consideration at least one parameter (see for example paragraph [0029] discussing a parametric model), and therefore may be viewed as a model comprising parametric characteristics. As such, dependent claims elaborating only on the model would be recognized by one skilled in the art as also being applicable to elaboration of a claim to the parametric characteristics.

However, in an effort to further this application to allowance, Applicant has, without intention of narrowing the scope of the claims, amended Claim 59 to remove the term "or parametric characteristics".

This amendment has not been entered to overcome the prior art and therefore, no presumption should attach that either the claim has been narrowed over that earlier presented, or that subject matter or equivalents thereof to which the Applicant is entitled has been surrendered.

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In view of the foregoing, Applicant respectfully submits that the claimed subject matter is described in such a manner that reasonably conveys to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Accordingly, Applicant respectfully requests the Examiner to reconsider and withdraw this rejection, which Applicant considers to be traversed.

**Rejections Under 35 U.S.C. §102(b)**

Claims 2-57 and 59-63 stand rejected under 35 U.S.C. §102(b) as being anticipated by Haridas et al, Medical Device and Diagnostic Industry Magazine "Predictive Analysis at the Forefront of Medical Product Development," hereinafter referred to as Haridas.

Applicant traverses this rejection for the following reasons.

Applicant respectfully submits that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, "[t]he identical invention must be shown in as complete detail as is contained in the \*\*\* claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Furthermore, the single source must disclose all of the claimed elements "arranged as in the claim." *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 U.S.P.Q. 1264, 1271 (Fed. Cir. 1984). Missing elements may not be supplied by the knowledge of one skilled in the art or the disclosure of another reference. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 780, 227 U.S.P.Q. 773, 777 (Fed. Cir. 1985). Dependent claims inherit all of the limitations of the respective parent claim.

**Regarding Independent Claims 57, 59, and 60**

Applicant has cancelled Claim 56, and has amended Claims 57, 59, and 60 to include subject matter previously present in Claim 56 to now recite, inter alia,

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"...wherein on an effective deployment of the prosthesis in the lesion, the instantaneous state of the endovascular prosthesis and shape of the lesion are taken into account in order to *simulate and visualize in three dimensions a future state* of the endovascular prosthesis and of the lesion *as a function of possible actions indicated by an operator*."

No new matter has been added by these amendments as antecedent support may be found in the specification as originally filed, such as at Claim 56 for example.

Dependent claims inherit all of the limitations of the respective parent claim.

In alleging anticipation, the Examiner asserts that Haridas discloses the content of Claim 56 at Page 4, "What if" Material Sensitivity Studies. Page 5, Paragraph 1. Page 6, Paragraphs 1-2. Figure 7-8 [paper 20060928, page 16]

In respectful disagreement with the Examiner, Applicant finds Haridas to disclose "...Such material data allow the simulation of the device tissue interaction problem to be exercised over the entire range of statistical variability, allowing the function of the device and the materials to be fully assessed." [Haridas, Page 4, "What if" Material Sensitivity Studies]. "...Additional tests to characterize the response of the polymer under constrained conditions, such as biaxial stretching, must be performed to generate the appropriate material constants for input into the finite element calculations." [Haridas, Page 5, paragraph 1]. "...finite element modeling of the balloon positioned within the lumen of the stenosis and then inflated against a virtual blocked vessel (Figures 8-10)." [Haridas, Page 6, paragraph 1].

Here, Applicant finds Haridas to disclose a modeling method that involves a methodology absent of real time steps.

In contrast to the claimed invention, Applicant respectfully submits that Haridas is absent disclosure of a determination of a future state of an *actual prosthesis deployed within the lesion based upon the instantaneous state followed by possible operator actions*, as is now claimed by Claims 57, 59, and 60: "...wherein on an effective deployment of the prosthesis in the lesion, the instantaneous state of the endovascular prosthesis and shape of the lesion are taken into account in order to *simulate and*

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*visualize in three dimensions a future state of the endovascular prosthesis and of the lesion as a function of possible actions indicated by an operator."*

Accordingly, Applicant submits that Haridas does not disclose all of the claimed elements arranged as in the claims, and absent anticipatory disclosure in Haridas of each and every element of the claimed invention arranged as in the claims, Haridas cannot be anticipatory.

In view of the amendment and foregoing remarks, Applicant submits that Haridas does not disclose each and every element of the claimed invention arranged as claimed and therefore cannot be anticipatory. Accordingly, Applicant respectfully submits that the Examiner's rejections under 35 U.S.C. §102(b) have been traversed, and requests that the Examiner reconsider and withdraw these rejections.

Applicant has amended the claims for presentation in a better form that more clearly reflects Applicant's invention. The claim amendments should only require a cursory review by the Examiner as they include language from previously presented claims.

In light of the foregoing remarks and amendments, Applicant respectfully submits that the proposed amendments and arguments comply with 37 C.F.R. §1.116 and should therefore be entered, and with their entry that the Examiner's rejections under 35 U.S.C. §101, 35 U.S.C. §112, second paragraph, and 35 U.S.C. §102(b), have been traversed, and that the application is now in condition for allowance. Such action is therefore respectfully requested.

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If a communication with Applicant's Attorneys would assist in advancing this case to allowance, the Examiner is cordially invited to contact the undersigned so that any such issues may be promptly resolved.

The Commissioner is hereby authorized to charge any additional fees that may be required for this amendment, or credit any overpayment, to Deposit Account No. 50-2513. In the event that an extension of time is required, or may be required in addition to that requested in a petition for extension of time, the Commissioner is requested to grant a petition for that extension of time that is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to the above-identified Deposit Account.

Respectfully submitted,

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